



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 18, 2005

Ms. Laura C. Rodriguez
Walsh, Anderson, Brown, Schulze & Aldridge
PO Box 460606
San Antonio, Texas 78246-0606

OR2005-00517

Dear Ms. Rodriguez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 216030.

The Schertz-Cibolo-Universal City Independent School District (the "district"), which you represent, received a request for five categories of information relating to the alleged abuse or neglect of the requestor's client by district employees.¹ You state that the district has released some responsive information. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.130, and 552.140

¹We note your statement that the requestor has provided the district with a parent authorization in compliance with the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"). FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information (other than directory information) contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1). "Education records" means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A). However, upon review of the submitted information, we find that none of this information constitutes educational records for purposes of FERPA. *See* 20 U.S.C. § 1232g(a)(4)(B)(ii) (excluding from its statutory definition of education records "records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement").

of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.²

First, we note that the requestor, Advocacy, Inc., ("Advocacy") in its request letter to the district dated October 12, 2004, claims a right of access to the requested information pursuant to its authority under federal law to conduct investigations of abuse or neglect of people with disabilities. Federal law provides allotments for the support of a protection and advocacy system ("P&A system") in each state to protect the legal and human rights of individuals with developmental disabilities. See 42 USC § 15041. Advocacy has been designated in Texas as the P&A system for purposes of the federal Developmental Disabilities Assistance and Bill of Rights Act ("DDA"), 42 U.S.C. §§ 15041-15045. See Tex. Gov. Exec. Order No. DB-33, 2 Tex. Reg. 3713 (1977); Attorney General Opinion JC-0461 (2002); see also 42 CFR §§ 1386.19, .20 (defining "designated official" and requiring official to designate agency to be accountable for funds and conduct of P&A agency).

DDA provides, in relevant part, that Advocacy, as the state's P&A system, shall

(B) have the authority to investigate incidents of abuse and neglect of individuals with developmental disabilities if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred;

...

(I) have access to all records of--

(i) any individual with a developmental disability who is a client of the system if such individual, or the legal guardian, conservator, or other legal representative of such individual, has authorized the system to have such access;

...

(J)(i) have access to the records of individuals described in subparagraphs (B) and (I), *and other records that are relevant to conducting an investigation*, under the circumstances described in those subparagraphs, not later than 3 business days after the system makes a written request for the records involved;

² We note that the requestor states that he does not seek any social security numbers, driver's license numbers, home addresses, home telephone numbers, tax information, employee insurance information, or information about employees' family members. Thus, any such information is not responsive to the request, and the district need not release this information in response to this request. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed).

42 U.S.C § 15043(a)(2)(B), (I)(i), (J)(i) (emphasis added). DDA states that the term “record” includes

- (1) a report prepared or received by any staff at any location at which services, supports, or other assistance is provided to individuals with developmental disabilities;
- (2) a report prepared by an agency or staff person charged with investigating reports of incidents of abuse or neglect, injury, or death occurring at such location, that describes such incidents and the steps taken to investigate such incidents; and
- (3) a discharge planning record.

42 U.S.C § 15043(c). In this case, Advocacy states in its October 12, 2004 letter that it “received multiple reports about possible abuse and neglect of [a named individual],” and that “[b]ased on these reports, Advocacy is conducting an investigation into abuse and neglect of [the named individual].” Advocacy indicates, and the submitted information reflects, that Advocacy is investigating the abuse or neglect of an individual with a developmental disability as defined by federal law. *See* 42 USC § 15002(8) (defining term “developmental disability”). Further, Advocacy states that the parents of the named individual have given Advocacy authorization to access the named individual’s records. Therefore, we conclude that Advocacy has a right of access to the submitted information pursuant to subsections (a)(2)(I)(i) and (a)(2)(J)(i) of section 15043 of title 42 the United States Code. *See Iowa Protection and Advocacy Services, Inc. v. Rasmussen*, 206 F.R.D. 630, 638 (S.D. Iowa, 2001) (language in statute providing that P&A systems shall have access to “other records that are relevant to conducting an investigation” demonstrates statutory mandate for production of records is intentionally broad).

Advocacy further asserts that, pursuant to federal law, any state confidentiality laws shall not restrict Advocacy’s right to the requested records. In this regard, we note that a state statute is preempted by federal law to the extent it conflicts with that federal law. *See, e.g., Equal Employment Opportunity Comm’n v. City of Orange*, 905 F. Supp 381, 382 (E.D. Tex. 1995). Further, federal regulations provide that state law must not diminish the required authority of a P&A system. *See* 45 CFR § 1386.21(f); *see also Iowa Prot. and Advocacy Services, Inc. v. Gerard*, 274 F.Supp.2d 1063 (N.D.Iowa, 2003) (broad right of access under section 15043 of title 42 of United States Code applies despite existence of any state or local laws or regulations which attempt to restrict access; although state law may expand authority of P & A system, state law cannot diminish authority set forth in federal statutes); *Rasmussen*, 206 F.R.D. at 639. *Cf.* 42 USC § 10806(b)(2)(C). Therefore, we conclude that the district must release the requested information to the requestor.

In summary, we conclude that Advocacy has a right of access to the submitted information under DDA and therefore, the submitted information must be released to Advocacy. However, the district need not release social security numbers, driver’s license numbers, home addresses, home telephone numbers, tax information, employee insurance information,

or information about employees' family members, as this information is not responsive to the request. If the district receives a future request for this information from an individual other than Advocacy, the district should again seek our decision.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael A. Pearle".

Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/jh

Ref: ID# 216030

Enc: Submitted documents

c: Mr. Steven Elliott
Advocacy, Inc.
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(w/o enclosures)